(19,511.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 411.

THE HAMBURG AMERICAN STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

MINNIE GRUBE, AS ADMINISTRATRIX OF JOHN GRUBE, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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1

STATEMENT REQUIRED BY RULE 41.

The action was commenced by the issuing of a summons and by the voluntary appearance of the defendant by its attorneys, Wheeler & Cortis, on January 9, 1902.

The answer of the defendant was served on January 29, 1902.

The names of the original parties are Minnie Grube, as Administratrix of the goods, chattels and credits of John Grube, deceased, against The Hamburg American Steamship Company, otherwise known as the Hamburg-Amerikanische Packetfahrt Actien Gesellschaft. 2

No change of parties has taken place, pending suit.

The case was tried before a Court and a jury, and resulted in a verdict by the jury of $15,000, which was reduced by consent to $10,000.

There was no opinion in writing by the Court below.

3

4 N. Y. SUPREME COURT.

MINNIE GRUBE, as Administratrix, &c.,
Plaintiff,

against

HAMBURG-AMERICAN STEAMSHIP COMPANY,
Defendant.

5

Take notice that the defendant in the above entitled action appeals to the Appellate Division of the Supreme Court in and for the first Judicial Department, from the judgment in favor of the plaintiff, for Eleven thousand and forty-eight 71/100 dollars ($11,048.71), entered in the office of the Clerk of the Supreme Court, New York County, on the 30th day of December, 1903, and from the order entered on the 11th day of January, 1904, denying defendant's motion for a new trial, and from each and every part of said judgment and order.

6 New York, January 26, 1904.

WHEELER, CORTIS & HAIGHT,
Attorneys for Defendant,
21 State Street,
Borough of Manhattan,
New York.

To Messrs. LAMB, OSBORNE & PETTY,
Attorneys for Plaintiff.

THOMAS L. HAMILTON, Esq.,
County Clerk.

SUPREME COURT. 7

TRIAL DESIRED IN COUNTY OF NEW YORK.

MINNIE GRUBE, as Administratrix of the Goods, Chattels and Credits of John Grube, deceased,

Plaintiff,

against

THE HAMBURG-AMERICAN STEAMSHIP COMPANY, otherwise known as the Hamburg-Amerikanische Packetfahrt Actien Gesellschaft, 8

Defendant.

Summons.

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the 9 complaint.

Dated New York, January 7th, 1902.

LAMB, OSBORNE & PETTY,
Plaintiff's Attorneys.
Office and Post Office Address,
No. 253 Broadway,
Borough of Manhattan,
New York City.

10 SUPREME COURT,

NEW YORK COUNTY.

MINNIE GRUBE, as Administratrix of the Goods, Chattels and Credits of John Grube, deceased,
Plaintiff,

against

THE HAMBURG-AMERICAN STEAMSHIP COMPANY, otherwise known
11 as The Hamburg-Amerikanische Packetfahrt Actien Gesellschaft,
Defendant.

The complaint of the plaintiff above-named, by her attorneys, Lamb, Osborne & Petty, respectfully shows to this Court upon information and belief:

First.—That on or about August 17th, 1901, the above-named John Grube died, and thereupon the above-named Minnie Grube was duly appointed by the Surrogate of the County of Richmond, State of New York, administratrix of his goods, chattels
12 and credits, she qualified and is now acting as such.

Second.—That prior to his death said John Grube was a citizen of the State of New York and a resident of said Richmond County.

Third.—That the above named defendant was at all times herein mentioned a foreign corporation, organized and existing under the laws of the German Empire, and had an office for the transaction of business in the City and County of New York, and had property there.

That at the times herein mentioned said defend-

ant owned and controlled the SS. *Alene*, and em- 13
ployed the said steamship in carrying passengers and cargoes between the City of New York, State of New York, and ports in the West India Islands.

Fourth.—That said steamship *Alene* was at the times herein referred to flying the flag of the German Empire, and was registered or enrolled in a port located in and constituting part of said German Empire.

Fifth.—That said defendant on or about January 3rd, 1895, filed in the office of the Secretary of State of New York a statement pursuant to Section 16 of the General Corporation Law of the State of 14
New York, including a designation of certain persons upon whom process against it might be served, and received from the Secretary of State of the State of New York a certificate of authority to do business within said State, and said statement and certificate were in force at the time herein referred to.

Sixth.—That on said August 17th, 1901, said John Grube was lawfully upon and below the deck of the pilotboat *James Gordon Bennett*, a vessel owned by the United New Jersey Sandy Hook Pilots' Association, a corporation organized under the laws of the State of New Jersey, and said *James* 15
Gordon Bennett was registered and belonged in the port of New York.

Seventh.—That on or about August 17th, 1901, said vessel, *James Gordon Bennett*, with said John Grube on board, at about between two and three o'clock in the afternoon, was prudently located in the waters of the States of New York and New Jersey in the vicinity of the Scotland Lightship and of the high seas.

Eighth.—That thereupon the said steamship *Alene*, controlled by defendant, and proceeding

16 from the port of New York southward, without warning, did negligently collide with and cut in two the said vessel *James Gordon Bennett*, and did cause the said vessel *James Gordon Bennett*, and the said John Grube on board of her, to sink and drown, and thereby caused the death of said John Grube.

Ninth.—That thereby the widow of said John Grube, above named, and the next of kin, were damaged in the sum of $25,000.

Tenth.—That by the laws of the State of New York and the State of New Jersey, within whose
17 territory and waters such collision occurred and such death was caused in consequence of defendant's negligence, and by the law of the German Empire pursuant to which defendant exists a cause of action for damages resulting from negligence is given to the administrator of the goods, chattels and credits of such decedent for the benefit of the widow and next-of-kin.

Eleventh.—That the above-named Minnie Grube has requested defendant to compensate her for the death of her said husband, John Grube, as required by the laws of said States and Empire, and
18 defendant has refused to make provision and denied all liability therefor to her.

WHEREFORE plaintiff demands judgment against the defendant in the sum of $25,000 and interest from August 17th, 1901, besides the costs of this action.

LAMB, OSBORNE & PETTY,
Attorneys for Plaintiff,
253 Broadway,
Borough of Manhattan,
City of New York.

STATE OF NEW YORK,
City and County of New York, } ss.:

GILBERT D. LAMB, being duly sworn, says that he is one of the plaintiff's attorneys in the above-entitled action, and that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the reason why this verification is made by deponent is that the plaintiff is without the City and County of New York where deponent resides and has his offices, and the source of the information as to matters sworn to upon information and belief is certain documents and statements of plaintiff and others having knowledge thereof, in deponent's possession.

GILBERT D. LAMB,

Sworn to before me this
6th day of January 1902.

THOS. C. McDONALD,
Commissioner of Deeds,
City of New York.

22 NEW YORK SUPREME COURT,

NEW YORK COUNTY.

MINNIE GRUBE, as Administratrix of the goods, chattels and credits of John Grube, deceased,

Plaintiff,

against

HAMBURG-AMERICAN PACKET COMPANY,

23 Defendant.

The answer of the defendant herein, by Wheeler & Cortis, its attorneys, upon information and belief:

First.—Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in the first paragraph thereof.

Second.—Denies any knowledge or information sufficient to form a belief as to the allegations contained in the second paragraph thereof.

24

Third.—Denies the allegations contained in the seventh paragraph thereof.

Fourth.—Denies that the said *Alene* without warning, did negligently collide with and cut into said vessel *James Gordon Bennett*, as alleged in the eighth paragraph thereof, admits that the said *Alene* caused the *James Gordon Bennett* to sink, and denies any knowledge or information sufficient to form a belief as to any of the remaining allegations contained in said eighth paragraph.

Fifth.—Denies any knowledge or information

sufficient to form a belief as to the allegations contained in the ninth paragraph thereof. 25

Sixth.—Denies that said collision and death occurred within the territory and waters of the State of New York and the State of New Jersey, as alleged in the tenth paragraph thereof, but avers and alleges that said collision occurred at a point outside the territory and waters of the States of New York and New Jersey, to wit, upon the high seas.

Seventh.—Further answering the complaint herein, and as a separate and distinct defense thereto, defendant alleges that at the time of said 26
collision the said *James Gordon Bennett* with all plain sails set, and with her helm lashed, without any lookout, and with no person at the wheel, was sailing aimlessly about on the high seas, directly in the path of vessels entering and leaving the port of New York, and was so carelessly and negligently navigated that the collision complained of could not be avoided by the use of ordinary care on the part of those having charge of the steamship *Alene*, which vessel was navigated with reference to the movements of said *James Gordon Bennett*, on the supposition that said *James Gordon Bennett* was under the control of a competent wheelman and with the ordinary lookouts properly stationed 27
and attending to their duties.

WHEREFORE, defendant prays that the complaint herein may be dismissed with costs.

WHEELER & CORTIS,
Attorneys for Defendant,
21 State Street,
New York, N. Y.

County of New York, ss.:

EMIL L. BOAS, being duly sworn, deposes and says: I am the agent in the port of New York of the defendant herein. I have read the foregoing

28 answer and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

The reason this verification is not made by defendant is that it is a foreign corporation and incapable of making the same.

The sources of my information and the grounds of my belief respecting the allegations of said answer are my familiarity with such matters as agent as aforesaid, and statements made to me by members of the crew of the Steamship *Alene*.

29 EMIL L. BOAS.

Sworn to before me this 29th day of January, 1902.

HARRY M. HEWITT,
Notary Public,
N. Y. Co.

SUPREME COURT,

TRIAL TERM—PART III.

30 March 24th, 1904.

MINNIE GRUBE, as Administratrix, &c.,

against

THE HAMBURG-AMERICAN PACKET COMPANY.

Present—Hon. JAMES A. O'GORMAN, Justice.

I hereby certify that this cause was this Decem-

ber 21, 22, 23 and 24, 1903, tried by the Court 31
and a jury, and a verdict rendered therein for the plaintiff for the sum of $15,000.00/100. Upon consent of counsel, verdict reduced to $10,000.00/100, 5% allowance. Motions to set aside verdict and for new trial denied. 30 days stay, of execution after notice of entry of judgment. 30 days to make a case.

THOMAS L. HAMILTON,
Clerk.

SUPREME COURT, 32

NEW YORK COUNTY.

MINNIE GRUBE, as Administratrix of the Goods, Chattels and Credits of John Grube, deceased,
Plaintiff,

vs.

THE HAMBURG-AMERICAN STEAMSHIP COMPANY, otherwise known as the Hamburg Amerikanische Actien Gesellschaft,
Defendant. 33

The above-entitled action having been duly tried before Mr. Justice James A. O'Gorman and a jury at Trial Term, Part 3 of the Supreme Court, on the 21st, 22nd, 23rd, and 24th days of December, 1903, and the jury having rendered a verdict for the plaintiff for the sum of $15,000.00/100, and defendant having moved to set aside verdict as excessive,

34 and the plaintiff having consented that the verdict be reduced to $10,000.00/100, and the costs having been duly taxed at the sum of $1,048.71/100.

Now, on motion of Lamb, Osborne & Petty, attorneys for plaintiff, it is

ADJUDGED that the plaintiff, Minnie Grube, as Administratrix of John Grube, recover of the defendant, The Hamburg-American Steamship Company, otherwise known as The Hamburg Amerikanische Packetfahrt Actien Gesellschaft, the total sum of Eleven thousand and forty-eight and 71/100 dollars ($11,048.71/100), and have execution therefor.

December 30th, 1903.

35

THOS. L. HAMILTON,
Clerk.

At a Trial Term of the Supreme Court held in and for the County of New York, at the County Court House in the County of New York, on the 24th day of December, 1903.

Present—Hon. JAMES A. O'GORMAN,
Justice.

36

MINNIE GRUBE, as Admx., &c.,
Plaintiff,

against

HAMBURG-AMERICAN STEAMSHIP COMPANY,
Defendant.

The issues of fact in this case having been tried

at the present Trial Term of this Court, and the jury having returned a verdict for the plaintiff for Fifteen thousand dollars, and the defendant having moved thereupon to set aside the verdict, and grant a new trial, upon exceptions, and because the verdict is for excessive damages, and otherwise contrary to the evidence and contrary to law, and Mr. Wheeler having been heard for the motion, and Mr. Palmer opposed, and the plaintiff consenting in open Court to reduce the verdict to Ten thousand dollars, it is 37

ORDERED that the said motion for a new trial be and the same hereby is denied.

J. A. O'G., 38
J. S. C.

SUPREME COURT.

MINNIE GRUBE, Administratrix of John Grube, deceased, Respondent, *against* THE HAMBURG-AMERICAN PACKET COMPANY, Appellant.	Case and Exceptions. 39

Case containing exceptions, made to review by appeal the judgment herein and the order denying a new trial, and for a new trial.

The issues in this case came on to be tried before Mr. Justice O'Gorman and a jury, on the 21st day of December, 1903, and continued on trial until the 24th day of the same month.

Mr. Arthur C. Palmer and Mr. Gilbert D. Lamb appeared for the plaintiff, and Mr. Everett P. Wheeler for the defendant.

40 The plaintiff put in evidence the chart which had been put in evidence in the previous trials, referred to in the stipulation hereinafter mentioned, and which on such trials had been marked Exhibit A. This mark was retained. A copy of the chart is annexed to this case. This stipulation, so far as material, is as follows:

That the point marked *Alene* and Wreckage, and initials A R M, indicated by the witnesses for the plaintiff as the point of collision between the *Alene* and the *James Gordon Bennett*, is less than three nautical miles from the New Jersey shore, and inside the harbor line; that the red buoy marked Wreck, mentioned in the order of the Light House
41 Board as indicating the wreck of the *James Gordon Bennett*, and the point marked V, and initials J. R., indicated by Captain Johannes Rohde as the point of collision, are both outside the harbor line, and more than three and less than twelve nautical miles from the nearest shore.

It is understood that the stipulation as to the chart in evidence does not include admission that the easternmost course of the boundary lines between the States of New York and New Jersey is correctly drawn thereon, defendant claiming that this extends only to the main sea and not further than a point northeast of the Hook Beacon.

The plaintiff then put in evidence Letters of Ad-
42 ministration which were alleged in the complaint and by which plaintiff was appointed administratrix of the estate of John Grube, deceased.

The plaintiff then put in evidence the Statute of the State of New Jersey, passed March 3rd, 1848, which is as follows:

"Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which would have been liable if death had not ensued, shall be liable to an

action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony." 43

The plaintiff then put in evidence Articles 20 and 21 of the Rules to Prevent Collisions at Sea and upon Inland Waters, adopted by the Congress of the United States by the Act approved June 7, 1897:

Article 20. When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

Article 21. When, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed. 44

NOTE.— *When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avoid collision* (*See Articles twenty-seven and twenty-nine*). (*Act of May 28, 1894.*)

The defendant in connection therewith put in evidence Articles 23, 27 and 29 of the same rules:

Article 23. Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. 45

Article 27. In obeying and construing these rules, due regard shall be had to all dangers of navigation or collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

Article 29. Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practices of seamen, or by the special circumstances of the case.

46 The plaintiff then read in evidence Section 2 of the Act of Congress, approved February 19, 1895, being at page 672, of Vol. 28, of the U. S. Statutes at Large, authorizing the Secretary of the Treasury to designate certain lines within which the Inland Rules of Navigation shall be in force.

The plaintiff then read in evidence a stipulation as to the dimensions of and ballast on the *Bennett:*

It is stipulated and admitted that the description and dimensions of the pilot schooner *James Gordon Bennett*, lost on the 17th day of August, 1901, in collision with the Steamship *Alene*, were as follows:

She was a schooner built of wood, having one deck, two masts, a plain head and an elliptic stern.

47
Length over all.....85-5 feet
Length on water line.....78 "
Breadth.....20-9 "
Depth.....9-4 "
Draught of water.....10 " 6 inches
Gross tonnage.....74 69/100 tons
Net tonnage.....70 96/100 "

New York, October 24, 1902.

It is stipulated that the statement of Messrs. C. & R. Poillon of the weight and description of ballast, anchor chain and anchors placed by them on the pilot boat *James Gordon Bennett* be received in evidence with the same force and effect as if a member of that firm had attended on the trial and testified thereto.

48

Copy

C. & R. Poillon
Office, 224 South Street,
New York.

New York, Oct. 28, 1902.

Messrs. Wheeler, Cortis & Haight,
21 State St, City.,

Gentlemen—Our books show that we furnished Pilot Boat *David T. Leahy* (afterwards *James Gordon Bennett*) 37,335 lbs. cast iron ballast and 40,745 lbs. kentledge (78,080 lbs. in all) and 2 anchors weighing respectively 620 and 724 lbs.

Yours truly,
(Signed) C. & R. Poillon.

The plaintiff then called EDWARD J. REARDON, who testified as follows: 49

I am apprenticed to the New Jersey and Sandy Hook Pilots' Association, to which the pilot schooner *James Gordon Bennett* belonged. I have been in its employ seven and a half years. I remember the day of the collision between the *Alene* and the *Bennett*, August 17, 1901. It was a fine clear day. There was a light breeze from the southward. The tide was ebb. The collision took place somewhere in the vicinity of the Scotland Lightship. At the time of collision the *Bennett* was on a south westerly course. She had been on that course fifteen minutes. She was a two-masted 50 schooner rigged vessel. I was boat keeper, and was on deck at the time of collision. The *Bennett* was moving, preceding the time of collision, about three or four knots. She had a double reef mainsail, whole foresail, jib and staysail. I noticed the steamship *Alene* at the bar where she was dropping her pilot, between the whistling buoy and Gedney's Channel, about halfway between the two. When I last noticed her she was heading under our stern. When she discharged her pilot she was about two miles or a mile and a half from the *Bennett*. When the *Bennett* was struck, I got hit by a sea and was picked up in the water. When I was picked up 51 I saw a pretty big piece of the *Bennett's* side broken off and floating. It was about 8 feet by 10. I also saw a floating coil of rope, foghorn, pieces of the fine work of the cabin, keelson wood, big blocks of wood, a lot of stuff around. The *Alene* struck the *Bennett* on the starboard side, just around the main rigging. At the time I noticed the *Alene* approaching, she was going about ten knots.

Q. About how long preceding this collision had you tacked to go about? A. Fifteen minutes; fifteen or twenty minutes.

52 The cross examination of the witness was directed to showing that in the time mentioned by him, during which the *Bennett* was on her westerly course, he included tne time consumed in the operation of tacking, and that after tacking, the speed of the *Bennett* was reduced from six knots, which it was while she was going to the eastward, before she tacked, to about two knots while she was on the westerly course. But inasmuch as no point is made on this in any of the exceptions hereafter noted, for the reason that the Appellate Division held on the first appeal herein that the evidence on this subject was conflicting and properly submitted to the jury, the testimony is not stated in full. He
53 also testified that the *Alene* was one of a regular line of West India steamers, and that he had often seen her before. He also testified that before the collision, the Scotland Lightship was on the *Bennett's* port bow.

On re-examination, he said that the *Bennett* never went to the south of the Scotland Lightship.

PHILIP J. CLARK was then called, and testified that he was a sailor on the *Bennett* at the time of collision; that she was then on a West South
54 West course, pointing towards Sandy Hook, and that she had been on that course at the time of collision, seven minutes; that he saw John Grube on the *Bennett* immediately preceding the collision, and that since then the latter has never been seen.

On cross examination, he said that he saw the Scotland Lightship on the *Bennett's* port bow, just before the collision. His testimony is not further stated, because in the previous decision of the Appellate Division in this case, it was held that there was evidence in the case to go to the jury of negligence on the part of the *Alene*, and the Court of Appeals has no jurisdiction to review this decis-

ion, and as John Grube was steward on the *Bennett*, and in no way responsible for her navigation, there was no evidence of negligence on his part and therefore on this appeal no exception on the question of negligence is available. 55

Plaintiff called FRANK HOPKINS, who testified among other things that John Grube was aboard the *Bennett* at the time; that he was never seen alive after the collision, though search was made for bodies; that John Grube was a very steady man, had been for 17 years in the employ of the pilots, and his compensation was $50 per month and his board and lodging, and that he was ashore about once per week to see his wife. 56

Plaintiff also read the testimony of ARTHUR B. CONNOR, given March 7, 1902, who testified that he was captain of a steam dredge that had been dredging at the entrance of the new channel, and had gotten his load and was going out to the dump, about three miles southeast of the Scotland Lightship, when he sighted the *Alene;* that she discharged her pilot at the point marked "X S. P. B." on the chart put in evidence by defendant, and marked Ex. 2. A copy of this chart is annexed to this case. 57

He also testified that he observed the *Bennett* sailing to the eastward, and that the farthest point to the eastward reached by her was that marked by him on the same chart, "X farthest *Bennett*".

The witness on being recalled, testified:

I observed the pilotboat *Bennett* possibly twenty minutes before the collision, during which time she did not change her course. She was hove to. Yes, sir. Had her foresail to the windward.

The testimony of the same witness, taken in the

58 Admiralty suit, in the U. S. District Court, April 3, 1902, as follows was put in evidence by consent:

I observed the *Bennett* from the time I left my station north of the Gedney buoy. That was surely half an hour before the accident. When I first noticed her she was heading to the eastward. She tacked ship probably at this time. I should say she was heading to the eastward when I first noticed her; she tacked ship I should say about at the time the *Alene* dropped her pilot; it was about surely 15 or 20 minutes before the collision. She held that course from the time she tacked and came in westerly until the collision.

59

On cross examination he testified (fols. 161, 162):

When I got my load on board and started for the dump I was just north of the Gedney Channel at the entrance of the new channel. It was at the point of that shoal ground marked "16" feet just north of the Gedney. And the word "hard" right under it and the word "red" printed.

I don't remember now the time I left. I do remember the time of the collision. We ran by our own power, twin screws. I was bothered a great deal in crossing the channel. I couldn't tell you about the distance or the speed we were going, I
60 was bothered so crossing the Gedney Channel. Usually deep loaded, full speed, those boats would make ten knots, but I had to stop and turn around for this English steamer.

He further testified that in his opinion the collision between the *Alene* and the *Bennett* took place a little to the eastward of the point marked "X *Alene* Wreckage, A. R. M." And his testimony tended to show that the wreckage of the *Alene*, after the collision, drifted to the eastward.

Other evidence was given by the plaintiff tending to support the charge of negligence against the *Alene*, and to show that she might and should have kept her helm hard-a-starboard and so gone under

the *Bennett's* stern, but as on this appeal no question is raised on this subject, the testimony is not stated in full. 61

The plaintiff read in evidence the testimony of THOMAS C. LENNAN, taken on the previous trial of this case. So far as it relates to the question of damages, it is as follows:

I am a Sandy Hook pilot. I am President of the Association known as the Sandy Hook Pilots, and have been President of the Association two years. That Association owned the *James Gordon Bennett*. At the time this collision happened, there was a steward, Mr. Grube, on board of her, beside sailors and pilots. I had known John Grube at least ten years. He was steward of the pilot-boat—steward in our employ, a first-class man. His wages at that time was $50 per month. His board and lodging was furnished him free. We pay at the rate of $50 per month on sail boats. We have one steamboat, and also another one under construction, on which we pay $75 a month, and Mr. Grube was on the line for promotion. He would receive the second boat as soon as she was put in commission. She will be in commission now in about seven or eight days. As far as I know he was in very good health. In two years, when I was captain of the boat, I know that he did not lose one cruise in two years. I never knew him to take a glass of liquor in my life. John Grube was not a pilot. He was an employe of the Pilots' Association. 62 63

He further testified that after the collision the pilots had a steam pilotboat and a sail boat cruising around in the vicinity of the supposed place of collision looking for bodies; that they also advertised and offered a reward, but the body of John Grube was never found or heard of.

64 **The plaintiff called EBEN TURNURE, who testified as follows:**

I am a Sandy Hook pilot, and have been such for 22 years. I belong to the New York Association. On the day of the collision between the *Bennett* and the *Alene*, I was aboard of the steam pilotboat *New York*. She was just outside of Gedney's Channel, taking pilots out of outward bound vessels. She was located there at the same place, practically, just moved backwards and forwards. Immediately preceding the time my attention was called to the collision between the *Alene* and the *Bennett*, she was about half-way between the
65 whistling buoy and the Gedney Channel. By the entrance to Gedney Channel I mean what has been called the electric buoy. It is the entrance buoy. My attention was called to the fact of the collision when the pilot from the *Falls of Keltie* came aboard and told us a collision had occurred.

Q. What did you then observe? A. Well, as soon as we got clear of the *Falls of Keltie* we took him out and hoisted our yawl and we went right down under her stern and went down towards the wreckage, and we saw two steamers there—we saw the *Alene* and the *Morro Castle*, and we saw the wreckage floating around there. There was a
66 couple of boats in the water. At that moment the *Morro Castle* was about on a line from us to the Scotland Lightship. She was in a range from us about a mile or a mile and a quarter north of the Scotland Lightship. The *Alene* was close to that position, just north of the *Morro Castle*. These two boats were almost in range with the Lightship.

Q. What, if anything, did you observe in the way of wreckage in the vicinity? A. There was a lot of wreckage. I saw the coamings of the hatches and covers of the hatch, and some floating wood, and I saw a code of signals, and I saw what we call firewood used for the kitchen stove, and different things from the boat; pieces of the deck.

After my attention was first called to that collision, we went down in the vicinity of the wreckage as fast as the boat could steam. The distance was only short. I should judge we got there within five minutes. The distance was only from half to three-quarters of a mile, to where the *New York* fell in with the wreckage and the *Alene*. Some of the wreckage was within a few feet of the *Alene*, and some was a hundred or two hundred feet. It was scattered by the time we got there. When we got to the *Alene* there was two boats alongside of her, one of her own, and the *Morro Castle's* life boat was there. She was lying still in the water. The wreckage was drifting out with the ebb tide, towards the southeast, I should say. I did not see the *Alene* move at all from the time my attention was first called to the accident. 67 68

Q. Now, as a matter of fact, did you notice on the following day or the day after, the place where a buoy was placed along what was supposed to be the wreck of the *James Gordon Bennett?* A. Yes, sir.

Q. Now, are you able to state to this jury where that position was with respect to where you saw the wreckage the day before; I mean the direction?

To this question the defendant objected, on the ground that the time when the witness saw the wreckage was so long after the collision that it affords no guide. It is undisputed that the *Alene* was in motion at the time of the accident. How fast she was going may be a question, but she certainly was in motion; and certainly also there was a time when the wreckage was drifting and floating on the surface of the water, and this witness does not know just how long after the accident he got to the scene of it. He did not see it himself. He was told by the 69

70 pilot of the *Falls of Keltie* that there was an accident, and he went down in his vessel and gets there ; and he is now asked, after that indefinite examination, to form a judgment as to what he saw placed the next day.

Mr. Palmer.—I submit that the form in which the objection is put is a matter of argument as to what it establishes. We have got the tide setting one way and we have got the wind described and stated to be in one direction. It is a matter of argument as to where the actual point of impact occurred ; and consequently it is not
71 an objection to the evidence, because it would be in the way of argument as——

The Court.—This witness has been permitted to state all that I apprehend he is capable of stating of his own knowledge with respect to the presence of the wreckage, and he has told you without objection that at the time he saw it the wreckage was north of the three-mile line.

Mr. Wheeler.—North of the lightship.

The Court.—North of the lightship and that the ebb tide was carrying it out, and was in a southeasterly direction; but, al-
72 though it had been carried some distance out, still it was inside and north of the lightship.

Mr. Palmer.—He can state further as to where they put the buoy to indicate the wreck as at present lying at the bottom of the sea. The contention here is that the point of impact occurred at the point where the buoy now marks the wreckage. We propose to show by an expert that when he saw that wreckage floating around the steamer that had caused her condition, that it was far removed from where that buoy is indicated.

The Court.—I shall allow the witness to answer the question. 73

To this ruling the defendant excepted.

Q. (By the Court).—Trusting to your own recollection and your own personal observation when you saw the wreckage on the day before, was it further north, south, east or west of the buoy that marks now officially the wreck? A. It is at least three-quarters of a mile northwest of where the buoy was placed.

By Mr. Palmer:

Q. You were conversant during all the time the buoy marked that wreck, where the *Bennett* had gone to the bottom? A. Yes, sir. 74

Q. And the point where you say you saw the floating débris in the locality where the *Alene* was laid to was three-quarters of a mile from that point? A. About that.

Q. (*By the Court.*) Northwest? A. North. west, about.

Q. (*By the Court.*) Gradually drifting out to sea? A. Yes, sir; on the ebb tide.

This buoy which marked the wreck was put near the point of the mast. I saw that. It was the heel of the mast. That is the part of the mast that 75 is stepped in the keelson, that goes down through the deck. The vessel had sunk and the mast had come up, because the vessel had gone to pieces and the wreck held the head of the mast down.

Q. When you say the vessel had gone to pieces ——A. (Interrupting.) I mean to allow the mast to come up. I saw it the next day when the lighthouse people put the buoy there. That was the morning of the day after the accident.

I took a bearing from the deck of the steam pilot boat *New York* just before I got to the wreckage. I could take that bearing from the lightship and

76 from the Highlands. I saw the Highlands open to the westward of the Scotland Light Ship.

Defendant conceded that the harbor line from Scotland Light Ship to the Whistling Buoy is practically the three mile limit.

The plaintiff then read the deposition of JAMES ROSS CURTIS, taken out of Court. He, having been duly sworn, testified as follows:

My name is James Ross Curtis, and I am a mariner, having been such for fourteen years, and
77 being at present chief officer of the *Morro Castle*. I occupied that position on the 17th day of August last. The *Morro Castle* belongs to the Cuban and American Mail Steamship Company, commonly called the Ward Line. Her tonnage is 6,400 gross. I have been her first officer for seven years. She sails from New York to Havana, and I enter and leave the harbor of New York twice a month, and am thoroughly familiar with all landmarks of the harbor. I can locate the position of the *Morro Castle* at half past two o'clock in the afternoon of the 17th of last August. At that time she was just about the entrance of Gedney's Channel, just about
78 at the first electric buoy, not the whistling buoy, but about where you discharge the pilot, just outside the electric buoy. I have the correct time here in my log book, and that was about the hour. About that time the sailors called my attention to a steamer running into a sailing vessel. I did not see the accident myself. One of the vessels was the *Alene*, a steamer of the Atlas Line, and the other was the pilot boat Number 7, *James Gordon Bennett*. I saw the steamer there apparently stop, or backing, or something. She was stopped and had wreckage all around her bow, wreckage, spars, &c. At the time I first looked she was about over half-way—the entrance of Gedney's Channel, where you discharge the pilot—the first electric buoy.

Q. That is half-way between the Scotland Light- 79
ship and your position? A. Yes, sir, I judge about half-way between the buoy and Gedney's Channel. The *Alene* and the wreckage were between us and the Scotland Lightship. I am familiar with the imaginary line running from Navesink Highlands to the Scotland Lightship and thence to the whistling buoy, then to the Rockaway Beach Life Saving Station. At the time I put that body into the boat of the *Alene*, the *Alene* boat, I was looking for my bearings at that time, and I thought she was just inside the Scotland Lightship, and the *Morro* was just inside. I am familiar with the Government chart of the Harbor of New York. 80
That is the chart, yes, sir.

The chart of New York Bay and Harbor, which was shown the witness on his cross examination, was the same as that already put in evidence and marked Exhibit A, except that the marks had not then been placed upon it.

Certain lines indicating the boundaries between the States of New York and New Jersey and the harbor line running from Navesink Highlands to the Scotland Lightship, and thence from the whistling buoy to the Rockaway Beach Life Saving Station, were 81
upon the chart at the time the same were offered in evidence, placed there by the attorneys for the plaintiff.

The witness indicated by mark (initialed by the Referee) and the name *Morro Castle*, the position of that vessel at the time in question.

Q. Now, Mr. Curtis, can you indicate on that chart the position of the *Alene* and the wreckage at the time you first noticed it?

To this question the defendant objected that from the portion of the deposition al-

82 ready read, it appears that Mr. Curtis took no bearings and made no observation of the positions of the vessels, or either of them, either of the *Alene* or of the *Bennett;* that he says himself he did not see the collision, and that upon cross examination in the same deposition, hereinafter printed (which was at the same time showed to the Court), he says expressly:

There was no particular reason why I should have taken my bearings accurately from the boat. I have not given any bearings. I noticed where I got the body aboard; I noticed where I was. I
83 looked around to see where I was; I saw the pilot-boat and the *Alene* where that was. I have not given any bearings. I have just given my opinion of the position where I was just in a general way from my memory of the situation.

The Court overruled the objection, and defendant excepted. The witness indicated upon the chart the position of the *Alene* and the wreckage at the time he first noticed it, and at that point the Referee writes the name *Alene* and "Wreckage", and initials it.

A. At the time I picked up the body of the man
84 from the *James Gordon Bennett*, I would change the position just a little bit to the southward of that. This is all approximate, of course; I had no bearings or anything else.

The plaintiff then put in evidence a stipulation from the official tide tables of the Atlantic Coast of the United States, published by the United States Government, for 1901, tide tables for Swash, Main, and Gedney Channels:

The direction of the tide at one hour before low water is North 82° East, the ve-

locity 1 7/10 knots per hour. At low water it is the same direction, with a velocity of one knot. At one hour after low water it is South 82° West, and at the rate of 1/10 knot per hour; two hours after low water it is South 82° West, and at the rate of 1 1/10 knots per hour. The time of low water was 3:44 P. M., and the slack before the flood, when there was practically no current at all, was at 4:23 P. M. 85

The plaintiff then called WILLIAM S. MCLAUGHLIN, who testified as follows:

I am and have been for four years a Sandy Hook pilot. As such I have had occasion to be down the bay in the vicinity of Scotland Lightship, frequently. I am familiar with the location of lightships, buoys and the different channels there. I remember the day of the collision between the *Bennett* and the *Alene*. My attention was first called to them around half-past two. I was just aboard the *Morro Castle*. She was coming out of Gedney's channel. The *Bennett* was going to the westward. Her bow was towards the Jersey coast. Immediately after I left the *Morro Castle*, I went in a yawl and into the steamship station boat *New York*. I did not notice the *Alene* then. I had noticed her while I was on the *Morro Castle*. The *Alene* was stopped outside the Gedney's channel discharging her pilot. After I got aboard the *New York*, I stopped around the deck a few moments and went below. I wasn't below more than ten minutes. I then came up on deck. I then saw the *Morro Castle* and the *Alene* apparently stopped. At that time the *New York* was between the outer buoy at Gedney's and the whistling buoy. The *New York* was then closer to the Gedney's buoy than the whistling buoy. 86 87

The witness indicated on the chart as the place where the *New York* was when he came up from below, the place marked "M".

88 I then noticed the Scotland Lightship and where the *Alene* was located.

Q. Where was that with respect to a line running from the *New York* to the Scotland Lightship?

To this question defendant objected, on the ground that the period was too long after the collision to afford a guide for the jury to determine in any way the place of collision, that the vessels had moved about meanwhile, and that, therefore, an observation of the then position of the *Alene* was immaterial.

Objection was overruled, and defend-
89 ant excepted.

A. It was about on a line between the *New York* and the Scotland lightship. The *Alene* was then pointed to the southward. Immediately after our observing the *Alene* at that point, we took a man out of a steamer, and after we picked the yawl up, we went down to the scene of the wreck. We got there about twenty minutes after I first observed her. When we got to the *Alene*, I should judge she was about a mile or a little less to the north of the Scotland Lightship. The wreckage I saw was the foghorn of the *Bennett*, the binnacle box, a part of the deck, some mat-
90 tresses and pieces of a hatch, and a great many other things I don't just recall now. The wreckage was drifting out with the ebb tide. The wind was to the southward and westerly. I observed the tide running by Gedney's buoy as I was coming out.

Cross examined:

Q. I had often been on the *Bennett*. The mattresses that after the wreck I found floating about on the water were stored in the berths, three on each side, from the mainmast to the after part of the companionway. In order for the mattresses to come up from there and float up, there must have

been openings in the deck sufficient to allow them through. I saw the hatch of the aft companionway floating in the water. Probably the force of the water drove it out. 91

When I noticed the *Bennett* from the *Morro Castle* I was possibly half a mile from the place where I went aboard the steam pilotboat. I noticed her just as we were going over the bar. The bar is at the easterly entrance. I went into the steam pilotboat from the *Morro Castle*, about half a mile to the east of the easterly entrance of the Gedney Channel. When I noticed the *Bennett* first I was on the bridge of the *Morro Castle*. The *Bennett* was then to the westward of a line drawn from the outer buoy at Gedney's to the Scotland Lightship. She was bearing from me south half east. From the time I saw the *Bennett* until I got aboard the steam pilotboat was probably four or five minutes. I had to get down the side of the *Morro Castle* into the yawl, and be pulled a couple of hundred feet. Then I went up the side of the *New York*. When I went below, I drank a cup of coffee. That is all I had downstairs, then I came up. As soon as I came up in the doorway, I saw the ships apparently stopped. When I got down to the *Alene* and saw this wreckage floating about, part of it was a piece of the deck. That was nine or ten feet by six. I should judge it would be part of the quarter-deck aft of the mainmast. The wind at that time was from South and West. The best explanation I can give of the wreckage being scattered, is that the screw of the steamer going through the wreckage would scatter it. 92 93

Re-direct examination:

A. Did you observe where the Government placed the buoy over what was supposed to be the *James Gordon Bennett*? A. Yes, sir.

Q. Are you able to tell this jury where that was,

94 relative to the place where you located the wreckage on the day of the accident?

To this question defendant objected on the ground that the observation was too remote from the period of collision; that the witness himself did not see the collision, that he has given us the location of the wreckage, and any further statement by him is an opinion.

The objection was overruled, and defendant excepted.

95 *The Court.*—Was it north or south of that point?

A. To the eastward.

Q. About how far to the eastward?

To this question the defendant made the same objection.

The objection was overruled, and defendant excepted.

A. I should judge about three-quarters of a mile.

96 ———

The plaintiff called MINNIE GRUBE, who was sworn and testified as follows:

I was the wife of John Grube. He was 45 years old. He had fifty dollars a month, and his board and lodging. He gave me all his money every month. Fifty dollars he handed me every month. He had been doing that the last twelve years, as long as he was on a pilot boat. Mr. Grube left me no property. He was a very industrious and ambitious man, a good man, and he provided well for me. He was never sick a day in his life. He was in perfect health.

I have had three children; none of them are living. 97
I am thirty-five years old. I saw my husband for the last time on Monday before the accident, and have never heard from him since then.

Cross examination:

Q. How did your husband get his clothes? A. My husband has got a good deal given from the pilots. The pilots were very good to my husband in that regard. If he bought a suit of clothes a year that was all.

Q. But he must have had underwear, socks and all that. You don't mean to say that he never spent any money for clothing? A. The pilots 98
were very good to my husband. Whatever he did spend for his clothes was very little, that it doesn't amount to a great deal. He spent very little for clothes. My husband was a man who took very good care of things. He spent very little, but I can't remember how much. It was very little.

The plaintiff then put in evidence from the Northampton tables, that the decedent had an expectation of life, at forty-five, of 20 and 52/100 years.

Plaintiff also introduced stipulation as to testimony of HENRY KNICKMAN, a sailor on board the *Bennett* at the time of the collision, tending to 99
show that immediately before the collision said John Grube was below deck in performance of his duties as cook, and that he was last observed by said Knickman in the galley under the hatch between the fore and mainmast.

The defendant introduced evidence tending to show that the diagram, Ex. 9, annexed hereto, which was put in evidence by it, showed correctly the relative courses of the *Bennett* and the *Alene*, but for the reason before stated, this evidence is not stated in full. And upon cross examination of the witness testifying to such evidence, testi-

100 mony was adduced by plaintiff tending to show that the diagram was made up from data furnished him by defendant's counsel.

It was proved that the morning after the collision the foremast of the *Bennett* was nearly vertical in the water, heel upward, and held by part of the forerigging a wire rope attached to the wreck; that this wreck was buoyed by the Light House Board of the United States Government, and was located in the position shown on said chart, Ex. 2, by the symbol of a buoy and the word Wreck. This was the point at which the defendant claimed the collision took place. For the reason aforesaid, this

101 evidence is not stated in full.

The notice of such location given by the Light House Board was put in evidence, and is as follows:

LIGHT HOUSE ESTABLISHMENT,

General Depot,

Office of Inspector for Third District.

TOMPKINSVILLE, N. Y., August 19, 1901.

Local Notice to Mariners:

New York off Entrance to Bay
Wreck Buoy Placed.

Notice is hereby given that a first-class spar buoy,

102 painted in black and red horizontal stripes has been established in 10 fathoms at mean low water to mark the wreck of the pilot boat *James Gordon Bennett*, sunk off the entrance to New York on the following magnetic bearings:

Sandy Hook light Vessel E 1/8 N.

Whistling Buoy at entrance Gedney Channel, N 7/16 E.

Scotland light Vessel, S. W. 1/2 W

Sandy Hook (rear) light House W. 3/4 N.

This buoy is about one hundred feet S. E from the wreck; one mast and heel of topmast are floating attached to rigging.

By order of Light House Board.

(Signed) WM. M. FOLGER,
Captain, U. S. N. Inspector.

The defendant then put in evidence the Statute of the State of New Jersey, passed March 12, 1846, page 124 of the New Jersey Laws of that year, ceding the Sandy Hook Peninsula to the United States. This Act is as follows: 103

LAWS OF NEW JERSEY 1846, PAGE 124.

An Act to vest in the United States of America jurisdiction over Sandy Hook.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That the jurisdiction in and over all that portion of Sandy Hook, in the county of Monmouth, owned by the United States, lying north of an east and west line through the mouth of Youngs creek at low water, and extending across the island or cape of Sandy Hook from shore to shore, and bounded on all other sides by the sea and Sandy Hook bay, be, and the same is hereby ceded to the said United States, for military purposes; and the said United States shall retain such jurisdiction so long as the said tract shall be applied to the military or public purposes of said United States, and no longer. 104

2. And be it enacted, That the jurisdiction ceded in the first section of this act, shall not prevent the execution on the said tract of land of any process, civil or criminal, under the authority of this State, except so far forth as such process may affect any of the real or personal property of the United States of America within the said tract; nor shall it prevent the operation of the public laws of this state within the bounds of the said tract, so far as the same may not be incompatible with the free use and enjoyment of the said premises by the United States for the purposes above specified. 105

3. And be it enacted, That all the lands and tenements within the aforesaid boundaries, so long as the same shall continue the property of the United States, and to be used for the purposes expressed in this act, shall be and remain exempted from all taxes, assessments, and other charges which may be imposed under the authority of this state.

4. And be it enacted, That this act shall take effect immediately.

Approved, March 1846.

106 The defendant then put in evidence the Act of Congress of the United States, passed March 26, 1804, contained in Vol. 2 of the U. S. Statutes at Large, page 294.

Defendant then put in evidence a deed from Richard Hartshorne and others to the United States, dated February 26, 1806, conveying the northern part of the Sandy Hook Peninsula.

This deed is as follows :

RICHARD HARTSHORNE and SUSANNA, his Wife, Tylee Williams and Elizabeth, his Wife,
107 and Nimrod Woodward and Ann, his Wife

to

THE UNITED STATES OF AMERICA.

Deed Indented. This Indenture made the twenty-sixth day of February, in the year of our Lord eighteen hundred and six, between Richard Hartshorne and Susannah, his wife, Tylee Williams and Elizabeth, his wife, and Nimrod Woodward and
108 Ann, his wife, all of the County of Monmouth and State of New Jersey, parties of the first part.

And the United States of America, parties of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of Three thousand seven hundred and fifty dollars, to them paid by the said United States of America immediately before the ensealing and delivery of the se presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do freely and absolutely grant, bargain and sell, alien, enfeoff, convey and confirm

unto the said United States of America and their assigns,

All that certain tract or lot of land, being part of a certain tract of land called Sandy Hook, in the said County of Monmouth, bounded and described as follows, that is to say: All that part of the point of land in the said County of Monmouth, lying on the north side of a line drawn east and west through the present light house on Sandy Hook.

Together with all houses, outhouses, buildings, woods ways waters water courses easements profits advantages privileges emoluments and hereditaments whatsoever to the said Lot or tract of Land belonging or in any wise appertaining or which to and with the same have been held and occupied reputed taken or known as part parcel or member thereof And the reversion and reversions remainder and remainders thereof and every part and parcel thereof with the appurtenances.

And also all the estate right title interest property claim and demand whatsoever in law or equity of them the said parties of the first part or any or either of them of in and to all and singular the premises above mentioned and of and to every part and parcel thereof with the appurtenances.

To have and to hold the said Lot or Tract of Land hereditaments and premises above granted and conveyed and every part and parcel thereof with the appurtenances unto the said United States of America and their assigns to the only proper use and behoof of the said United States of America and their assigns forever.

And the said Richard Hartshorne Tylee Williams and Nimrod Woodward for themselves their heirs executors and administrators Do hereby covenant and agree to and with the said United States of America and their assigns that the said United States of America and their Assigns shall and may at all times hereafter quietly and peaceably have hold occupy use and enjoy the said Tract of Land and premises hereby granted and conveyed and

every part thereof with the appurtenances without any suit trouble, eviction or disturbance whatever of by or from the said Richard Hartshorne Tylee Williams and Nimrod Woodward, or either of them or of by or from any person or persons lawfully claiming or to claim the same or any right interest or estate therein.

And Also that they the said Richard Hartshorne Tylee Williams and Nimrod Woodward, their heirs executors and administrators shall and will Warrant and by these presents forever defend the said tract of Land and premises hereby granted and conveyed and every part and parcel thereof, with the appurtenances unto the said United States of America and their assigns against them the said Richard Hartshorne Tylee Williams and Nimrod Woodward and their heirs and against all and every other person whomsoever lawfully claiming or to claim the same.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

RICHD HARTSHORNE [L. S.]
SUSANNA HARTSHORNE [L. S.]
TYLEE WILLIAMS [L. S.]
ELIZABETH WILLIAMS [L. S.]
ANN WOODWARD [L. S.]

Signed, Sealed and Delivered in the presence of

WILLM. HARTSHORNE
WILLIAM LALTAR

The deed was duly acknowledged February 26, 1806, and was recorded in the office of the Clerk of Monmouth County, April 28, 1807.

Defendant then put in evidence the deed of Richard Hartshorne and wife to the United States, dated June 17, 1817, conveying the balance of the

Sandy Hook Peninsular to the south of the land described in the first deed ; the two deeds together conveying the whole of the Sandy Hook Peninsula north of the boundary line described in the Statutes of New Jersey, hereinbefore stated. 115

RICHARD HARTSHORNE AND SUSANNA, his Wife,

to

THE UNITED STATES OF AMERICA.

116

Deed Indented. This Indenture made the seventeenth day of June in the year of our Lord one thousand eight hundred and seventeen.

Between Richard Hartshorne of the Township of Middletown in the County of Monmouth and State of New Jersey and Susannah his wife of the first part,

And the United States of America of the second part,

Whereas the proprietors of East Jersey by certain letters patent under the Seal of their said province bearing date the second day of November in the year of our Lord one thousand six hundred and ninety-two did grant, release and confirm 117 unto Richard Hartshorne now deceased and his heirs certain lands and among others all that tract piece or parcel of land hereinafter described and conveyed and Whereas by a certain deed poll, bearing date the tenth day of May in the year of our Lord one thousand seven hundred and six the said Richard Hartshorne the said patentee, did grant, bargain and sell the said lands hereinafter described to his son, William Hartshorne and his heirs and Whereas the said William Hartshorne being seized and possessed of the said lands did make and publish his last will in due form of law

for passing real estate and did thereby authorize his executors to sell all his real estate and did appoint Thomas Hartshorne, Hugh Hartshorne and Robert Hartshorne, executors of the said last Will Testament and did afterwards die seized and possessed as aforesaid and whereas by a certain Deed Indented bearing date the eighteenth day of April in the year of our Lord one thousand seven hundred and forty-nine the said Thomas Hartshorne, Hugh Hartshorne and Robert Hartshorne executors as aforesaid granted, bargained and sold the lands hereinafter described to John Hartshorne and his heirs and whereas by a certain deed indented bearing date the tenth day of July in the year of our Lord 1749 the said John Hartshorne did grant, bargain and sell the said lands hereinafter described to Hugh Hartshorne, Robert Hartshorne and Esek Hartshorne and their heirs as tenants in Common. And whereas by a certain deed indented bearing date the seventeenth day of January in the year of our Lord one thousand seven hundred and fifty-four the said Hugh Hartshorne did grant, bargain and sell all his right, title and interest in and to the lands hereinafter described to the said Robert Hartshorne and Esek Hartshorne and their heirs as tenants in common. And whereas by a certain deed indented bearing date the thirty-first day of December, in the year of our Lord one thousand seven hundred and ninety-nine the said Robert Hartshorne did grant, bargain and sell all his right, title, interest and estate in the said lands hereinafter described to the said Richard Hartshorne party hereto of the first part and his heirs and whereas the said Esek Hartshorne being seized and possessed of one undivided moiety of the said lands and hereafter described made and published in his last will and testament in due form of law for passing real estate and thereby authorized his executors to sell his real estate and afterwards died seized and possessed as aforesaid. And whereas the Executors of the said

Esek Hartshorne in pursuance of the authority granted them by the said will did by a certain deed grant, bargain and sell the said undivided moiety of the lands hereinafter described to Tylee Williams and Nimrod Woodward and their heirs and whereas by a certain deed indented bearing date the twenty fifth day of May in the year of our Lord one thousand eight hundred and seven the said Tylee Williams and Elizabeth his wife and the said Nimrod Woodward and Ann his wife did grant, bargain and sell all their undivided parts or shares of the said land hereinafter described to the said Richard Hartshorne party hereto of the first part and his heirs. 121 122

Now this indenture witnesseth that in consideration of the sum of twenty thousand dollars lawful money of the United States at and before the sealing and delivery of these presents the receipt and payment whereof the said parties of the first part do hereby acknowledge and thereof and of every part and parcel thereof do exonerate, acquit and discharge the said United States by these presents they the said parties of the first part have given, granted, bargained, sold, released, enfeoffed, conveyed and confirmed and by these presents do grant, bargain, sell, release, enfeoff, convey and confirm unto the United States of America. 123

All that certain tract, piece or parcel of land, situate, lying and being in the said County of Monmouth and called Sandy Hook, bounded southwardly by a line running east from the mouth of Youngs Creek at Low Water to the Sea and on every other side by the Sea, except only four acres of land sold and conveyed by Robert Hartshorne and Esek Hartshorne to John Cruger, Philip Livingston, Leonard Lispenard and William Bayard by a certain deed bearing date the tenth day of May in the year of our Lord one thousand seven hundred and sixty two which said four acres are now the property of the said United States and

upon which said four acres the Light House now stands and also excepting all that part of the said tract which by a certain deed bearing date the 26th day of February in the year of our Lord one thousand eight hundred and six was also conveyed to the said United States and which in the deed last aforesaid is described as all that certain lot or tract of land being part of a certain tract of land called Sandy Hook in the said County of Monmouth bounded and described as follows, that is to say,

All that part of the point of land in the said County of Monmouth lying on the north side of a line drawn east and west through the present Light House on Sandy Hook.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders of all and singular the lands, tenements, hereditaments and premises hereby granted and conveyed or mentioned to be hereby granted and conveyed, and every part and parcel thereof, and all the rents, issues, services and profits thereto and to every part thereof belonging or appertaining. And also all the estate, right, title, interest, dower and right of dower, claim and demand whatsoever, both in law and equity of the said parties of the first part or either of them in or to the same lands, tenements, hereditaments and premises and every part and parcel thereof.

To have and to hold the said lands, tenements, hereditaments and premises hereby granted, bargained and sold or mentioned or intended to be hereby granted, bargained and sold and every part and parcel thereof with their and and every of their appurtenances unto the said United States of America and their assigns to the only proper use, benefit and behoof of the said United States of America and their assigns forever. And the said Richard Hartshorne for himself, his

heirs, executors and administrators and for every 127
of them doth covenant and grant to and with the
said United States of America and their assigns by
these presents in manner and form following that
is to say, that the said Richard Hartshorne now is
the true and lawful owner of the said lands, tene-
ments, hereditaments and premises hereby granted
and conveyed and of every part and parcel thereof
with their and every of their appurtenances and is
rightfully and absolutely seized thereof of a good,
sure, absolute and indefeasible estate of Inherit-
ance in fee simple, without any manner of condi-
tion, trust, proviso, or limitation of use and uses
or other restraint matter or thing whatsoever, to
alter, change, charge, incumber or defeat the same. 128
And that the said Richard Hartshorne now hath
good right, full power and lawful authority in him-
self to grant, bargain, sell and convey all and sin-
gular the said lands, tenements, hereditaments and
premises hereby granted and conveyed or mentioned
to be hereby granted and conveyed as aforesaid
and every part and parcel thereof with the appur-
tenances unto the said United States of America
and their assigns to the only proper use of the said
United States and their assigns in manner and form
aforesaid and that the said United States of
America and their assigns and every of them shall
or lawfully may from time to time and at all times 129
hereafter have, hold, occupy, use, possess and en-
joy all and singular the said lands, tenements,
hereditaments and premises hereby conveyed or
mentioned or intended to be hereby conveyed and
every part and parcel thereof with their and
every of their appurtenances without any
manner of let, suit, trouble, eviction, dis-
turbance or molestation whatever of or by
the said Richard Hartshorne, his heirs or assigns
or any other person or persons whatever lawfully
claiming or to claim the said lands, tenements,
hereditaments and premises or any part or parcel
thereof, and that the said lands, tenements, hered-

130 itaments and premises hereby granted and conveyed or mentioned or intended to be hereby granted and conveyed as aforesaid, and every part and parcel thereof with their and every of their appurtenances now are and be and forever hereafter shall continue, remain and be unto the said United States of America and their assigns, free and clear and freely and clearly and absolutely freed and acquitted, exonerated and discharged of and from all and all manner of former and other bargains, sales, grants, devises, uses, jointures, dowers, mortgages, judgments and all debts of record and incumbrances whatsoever had made, ac-
131 knowledged or suffered or cause to be had made, acknowledged or suffered by the said Richard Hartshorne or by any other person or persons whatsoever, and the said Richard Hartshorne for himself, his heirs, executors and administrators and for every of them doth further covenant and grant to and with the said United States of America and their assigns and with every of them by these presents that the said Richard Hartshorne his heirs and assigns and all and every other person whatsoever having or lawfully claiming or who shall or may at any time or times hereafter have or lawfully claim any estate, right, title, or interest of, in or to the said lands, tenements, hereditaments and premises hereby granted and conveyed
132 or mentioned or intended to be hereby granted, and conveyed or of in or to any part or parcel thereof shall and will from time to time and at all times hereafter at and upon the reasonable request of the said United States or their assigns or of any person acting in behalf of the said United States and at the costs and charges in the law of the said United States or their assigns make do levy, execute, acknowledge, and suffer or cause to be made, done, levied, executed, acknowledged and suffered all and every such further and other reasonable act and acts, thing and things, devise and devises, assurance and as-

surances, conveyance and conveyances in the law whatsoever for the better and more perfect assurance of the said lands, tenements, hereditaments and premises hereby granted and conveyed or mentioned or intended to be hereby granted and conveyed or any of them and of every or any part or parcel thereof with all and singular their and every of their appurtenances unto the said United States and their assigns according to the true intent and meaning of these presents as by the said United States, and their assigns or any of them or by their or any of their counsel learned in the law shall or may be reasonably advised, devised or required, and the said Richard Hartshorne for himself, his heirs, executors, and administrators hereby releases to the said United States and their assigns all the covenants and agreements in the said deed bearing date the tenth day of May in the year of our Lord one thousand seven hundred and sixty-two contained on the part of the said John Cruger, Philip Livingston, Leonard Lispenard, and William Bayard to be kept and performed. And the said Richard Hartshorne for himself, and his heirs, doth hereby grant that the said Richard Hartshorne and his heirs the lands, tenements, hereditaments and premises hereby granted and conveyed or mentioned or intended to be hereby granted and conveyed and every part and parcel thereof will all and singular their and every of their right, members and appurtenances unto the said United States of America and their assigns against the said Richard Hartshorne, his heirs and assigns against all and every other person and person whatsoever shall and will warrant and forever defend by these presents. 133 134 135

In witness whereof the said Richard Hartshorne hath hereunto set his hand and seal the day and year first above written.

Susanna Hartshorne (L. S.).
Rich Hartshorne (L. S).

Sealed and delivered in presence of John Aspinwall, Joseph S. Gallagher.

136 *City of New York*, ss.:

On the 7th of June, 1817 before me, Brockholst Livingston, an Associate Justice of the Supreme Court of the United States, came the grantors within named who severally acknowledged that they had executed the within deed and the within named Susanna Hartshorne being examined by me separate and apart from her husband acknowledged that she had executed the same without any fear, threat or compulsion on his part. I do therefore allow it to be recorded.

B. LIVINGSTON.

137 The within written deed does in my opinion convey to the United States a good and indefeasible title to the land and premises therein particularly described, New York, June 17th, 1817.

JOHN FISKE, Atty., U. S.

Rec'd and recorded June 27th, 1817 (Compared).

G. LLOYD, Clerk.

The following stipulation, with reference to the boundary line, mentioned in the statute of New Jersey before mentioned, approved March, 1846, and the accompanying map was then put in evi-

138 dence :

It is stipulated that the defendant may put in evidence the copy of a map of Sandy Hook, New Jersey, surveyed and drawn under the direction of Lieut. Col. Gillespie, which is marked Exhibit 18, without further proof that the southern boundary line, marked "Old U. S. boundary", as shown on said map, is the boundary mentioned in the Statute of the State of New Jersey, approved March, 1846, page 124, Laws of that year.

December 15, 1903.

The map above referred to is not reproduced herein. The "Old U. S. boundary" is indicated on the chart, Exhibit A and 2.

Defendant also put in evidence the Statute of 139
the State of New Jersey, passed February 26th, 1834, printed on page 118 of the Statutes of 1833 and 1834, and the Act of Congress of the United States, approved June 28. 1834, printed at page 708 of the 4th volume of the United States Statutes at Large..

The statute of New Jersey is as follows:

An Act to ratify and confirm an agreement made between the Commissioners appointed by the Governor of the State of New York and the Commissioners appointed by the Governor of the State of New Jersey respecting the territorial limits and jurisdiction between the said States.

WHEREAS, Commissioners duly appointed on the 140
part of the State of New York and Commissioners duly appointed on the part of New Jersey for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States have executed certain articles, two copies for each State, which are contained in the following words:

AGREEMENT made and entered into by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, Commissioners duly appointed on the part and behalf of the State of New York, in pursuance of an act of the Legislature of the said State, entitled "An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey", passed January 18th, 1833, of the one part, and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, 141
Commissioners, duly appointed on the part and behalf of the State of New Jersey, in pursuance of an act of the Legislature of the said State entitled "An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York", passed February 6th, 1833, of the other part.

ARTICLE I.—The boundary line betwen the two States of New York and New Jersey, from a point in the middle of Hudson River, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the

142 water between Staten Island and New Jersey, and of Raritan Bay, to the main sea, except as hereinafter otherwise particularly mentioned.

* * * * * *

THEODORE FRELINGHUYSEN,
JAMES PARKER,
LUCIUS Q. C. ELMER,
B. F. BUTLER,
PETER AUGUSTUS JAY,
HENRY SEYMOUR.

THEREFORE,

BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the aforesaid agreement, and every article, clause, matter and
143 thing, therein contained, shall be and the same is hereby fully and amply ratified and confirmed on the part of the State of New Jersey.

Passed February 26, 1834.

Defendant then called Rogers Birnie, who was sworn, and testified as follows:

I am a Major in the Ordnance Department of the United States Army. I have been in the army since 1868, when I entered West Point. I am thoroughly familiar with the Peninsula at Sandy
144 Hook shown on the chart, Exhibit 2, north of the United States Boundary Line.

I was transferred to the Ordnance in 1878, and visited the proving ground on that Peninsula about that time, and have frequently visited it since, and have been on duty there since July, 1899. Since 1878, the Government of the United States has used that Peninsula, that is to say, the land portion, bordering on the outer waters for firing over land range north to the neck of land, swinging around from its southerly direction to about an easterly direction or a little more, even sometimes firing to the north of east. In all that quadrant from the land southeast to the north-

east, firing has been done over water for ranges 145
sometimes up to about thirteen thousand yards, something over eight miles. In the last four years, this firing has been going on daily except Sundays. The magnitude of the work at the proving grounds has increased very much during the last ten years. Prior to that time there was firing going on, as I know from the records, since 1874 ; firing at any time when a gun might be ready to test, practically daily.

On being cross examined the witness testified:

I know where the Scotland Lightship is located.

Q. What direction from the Scotland Lightship is it over the water for the purpose of testing guns, 146
at the point you have indicated? A. On each side of it, both towards the south and toward the east. I should say that the Scotland Lightship is a little to the east or southeast from the firing point, and we would come around about forty-five degrees from that towards the east and north, that is to say, the firing would be done in the direction of the Lightship there, to about forty-five degrees to the north of it. I was on duty there in August, 1901. Firing is going on whenever there is a gun to test.

Q. Do you state in August and September, 1901, they were testing guns there daily? A. I will state that to the best of my knowledge and belief. As 147
my mind now serves, I was present during the month of August, 1901, at the place I have indicated, where firing is conducted by the Government. I was present in my capacity as a member of the Ordnance Board in charge of the experiments there. Records are kept for the purposes of determining what guns are tested, and the result. I have not made any examination of these records for the purpose of determining what was done with reference to the firing of guns on the 17th of August, 1901. I was not notified so to do.

Defendant also gave evidence tending to show that according to the physical laws of nature, the

148 schooner *James Gordon Bennett* must have sunk to the bottom immediately after the collision, and that it was not physically possible for her to drift from the place where she sank any considerable distance, and certainly not to a distance of over 100 feet, and upon cross examination of witnesses so testifying, testimony was adduced by plaintiffs tending to establish that all the knowledge of such witnesses regarding wrecks and what happens in respect to their immediately sinking and drifting was exclusively acquired on land, and in the laboratory, and not from any personal observation thereof or experience therewith on the ocean, but
149 that they had studied scientifically the physical laws of nature governing such subjects, and made experiments in mechanics and physics, and on friction and on the displacement of bodies. But inasmuch as by the previous decision of the Appellate Division of the Supreme Court in this case, it was held that there was evidence to go to the jury, as to whether or not the collision happened at or near the point marked on the chart Ex. A and 2, X *Alene* Wreckage, and as the Court of Appeals of the State of New York has no jurisdiction to review this decision of the Appellate Division, this testimony is not stated in full.

Defendant then at the request of plaintiff, and in
150 order to avoid unnecessary calling of witnesses to that effect, admitted that the pilotboats and other vessels plying in and out of the port of New York at times pass over all of the water used by the United States officials in discharging guns at Sandy Hook, over which the firing testified to by Major Birnie took place.

The defendant asked the Court to direct a verdict for the defendant, upon the following grounds:

Defendant claims the right, under the statute of the United States confirming and approving the agreement as to boundaries between the State of New York and the State of New Jersey, to be

free in navigating the main sea to the eastward of Sandy Hook Peninsula, from the operation of any law of the State of New Jersey giving a right of action for injuries causing death, and claims that under the statutes aforesaid, the jurisdiction of that State extends only to the main sea; that is to say, low water mark along its exterior coast line and to a line drawn from headland to headland across the entrance to the Bay of New York. It, therefore, asks the Court to direct the jury to return a verdict for the defendant, on the ground that it appears by uncontradicted evidence that the collision between the SS. *Alene* and the schooner *James Gordon Bennett*, to recover damages for which this suit is brought, occurred upon the main sea and to the eastward of the Sandy Hook Peninsula, and at a distance of more than a mile to the eastward of low water mark upon the exterior line thereof. 151 152

Defendant claims the right, by reason of the purchase by the United States of the Sandy Hook Peninsula, and the cession to the United States by the State of New Jersey of jurisdiction over the the same and the long continued use of that peninsula, and of the main sea to the eastward of it for military purposes, to be free in navigating the main sea to the eastward of that peninsula from the operation of any law of the State of New Jersey, giving a right of action for injuries causing death, and claims that the main sea to the eastward of said peninsula to a distance of three miles from the shore is subject to the exclusive jurisdiction of the United States. It, therefore, asks the Court to direct the jury to return a verdict for the defendant, on the ground that it appears by uncontradicted evidence that the collision between the SS. *Alene* and the schooner *James Gordon Bennett*, to recover damages for which this suit is brought, occurred upon the main sea and to the eastward of the Sandy Hook Peninsula, and at 153

154 a distance of more than a mile to the eastward of low water mark, upon the exterior line thereof.

The Court denied the motion, and defendant excepted. The Court thereupon charged the jury upon the issues in the case, but inasmuch as no exception was taken to the charge, and it did not cover any of the points mentioned in the motion to direct a verdict, the charge is not given.

The jury returned a verdict for the plaintiff for fifteen thousand dollars.

Before the entry of judgment, defendant moved for a new trial, upon the exceptions aforesaid and because the verdict was contrary to the evidence and contrary to the law; and because the damages
155 were excessive. The plaintiff thereupon consented to a reduction of the verdict to ten thousand dollars.

> *The Court.*—The verdict is reduced to Ten thousand dollars by consent. The motion for a new trial is denied.

The above case, containing exceptions, contains all the evidence material to the exceptions therein stated and to the motion for a new trial on the ground that the damages were excessive.

Inasmuch as the exceptions aforesaid do not appear upon the record, the Justice before whom the case was tried hereby signs the foregoing case,
156 containing such exceptions, and orders it to be annexed to the judgment-roll herein.

City and County of New York, ss.: 157

CLARENCE B. SMITH, being duly sworn, says:
I am a member of the firm of Wheeler, Cortis & Haight, defendant's attorneys in this action. No written opinion was rendered by the Judge before whom the case was tried.

CLARENCE B. SMITH.

Sworn to before me this 19th day of April, 1903.

HARRY M. HEWITT,
Notary Public,
New York County.

158

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing are true copies of the original notice of appeal, judgment roll, order denying new trial, and case and exceptions on file in the Office of the Clerk of the County of New York, and certification thereof by the Clerk of the County of New York is hereby waived.

Dated April 20, 1904.

LAMB, OSBORNE & PETTY,
Plaintiff's Attorneys. 159

WHEELER & CORTIS,
Defendant's Attorneys.

The within case having been duly settled by consent, I hereby sign the same, and order it to be amended to the judgment roll herein; and I further order this printed copy to be filed as the original case on appeal herein.

JAMES A. O'GORMAN,
J. S. C.

Dated April 21, 1904.

ORDERED, on the foregoing stipulation that the printed case herein be filed with the Clerk of the Appellate Division.

J. A. O'GORMAN,

160 An opinion of the Court of Appeals in this case is subjoined:

COURT OF APPEALS.

MINNIE GRUBE, as Administratrix, etc.,
Respondent,

vs.

HAMBURG-AMERICAN PACKET COMPANY,
Appellant.

161

Appeal from a judgment of the Appellate Division, First Department, affirming a judgment entered upon a verdict, and from an order denying a motion for a new trial.

EVERETT P. WHEELER, for Appellant.
GILBERT D. LAMB, for Respondent.

WERNER, J.

The Appellate Division has unanimously affirmed the judgment entered upon the verdict for the plaintiff herein. Upon the record presented to us
162 we deem it necessary to discuss only a single question, and that is raised upon the refusal of the trial court to charge two requests which we think defendant's counsel was entitled to have submitted to the jury. A brief statement of the material facts will disclose the relevancy and importance of these requests. The action is one for damages for alleged negligence which resulted in the death of plaintiff's intestate. On the 17th day of August, 1901, the steamer *Alene*, owned by the defendant, and the pilot schooner *James Gordon Bennett*, owned by a New Jersey corporation, collided in the vicinity of Scotland Lightship, in the harbor of New

York, with the result that the schooner went 163
to the bottom and carried several of her crew with her. Among those who perished was plaintiff's intestate. One of the questions litigated was that of jurisdiction, which depended upon conflicting evidence and which, upon the record before us, the unanimous affirmance below has concededly and conclusively resolved in favor of the plaintiff. Another contested question was that of defendant's alleged negligence, and this in turn depended, in some degree, upon the existence or absence of negligence in the sailing of the schooner, in the wreck of which plaintiff's intestate lost his life. Defendant contended, and introduced evidence 164
tending to prove, that at the time of the collision there was no one at the wheel of the schooner and that she had no "lookout". This was controverted by evidence tending to show that all hands were on deck of the schooner with the exception of four pilots, and the steward, the plaintiff's intestate.

As it is conceded that plaintiff's intestate was free from contributory negligence, the trial court correctly charged that concurring negligence in the navigation of both vessels would not defeat plaintiff's right to recover, because if that were the fact she could bring her action against either or both of the guilty parties. But, on the other hand, it is 165
obvious, even upon the somewhat nebulous state of the record with reference to the relative positions of the vessels just before the collision, that the question of defendant's negligence depended somewhat upon the degree of care exercised in the navigation of the schooner. It was, therefore, important that any request bearing directly upon that subject should have been explicitly charged.

The requests referred to were as follows:

"4. When the schooner had changed her course and headed to the westward, it was Captain Mix's duty to keep a man at the wheel and not allow her to drift before the wind".

"5. It was also his duty to keep a lookout after

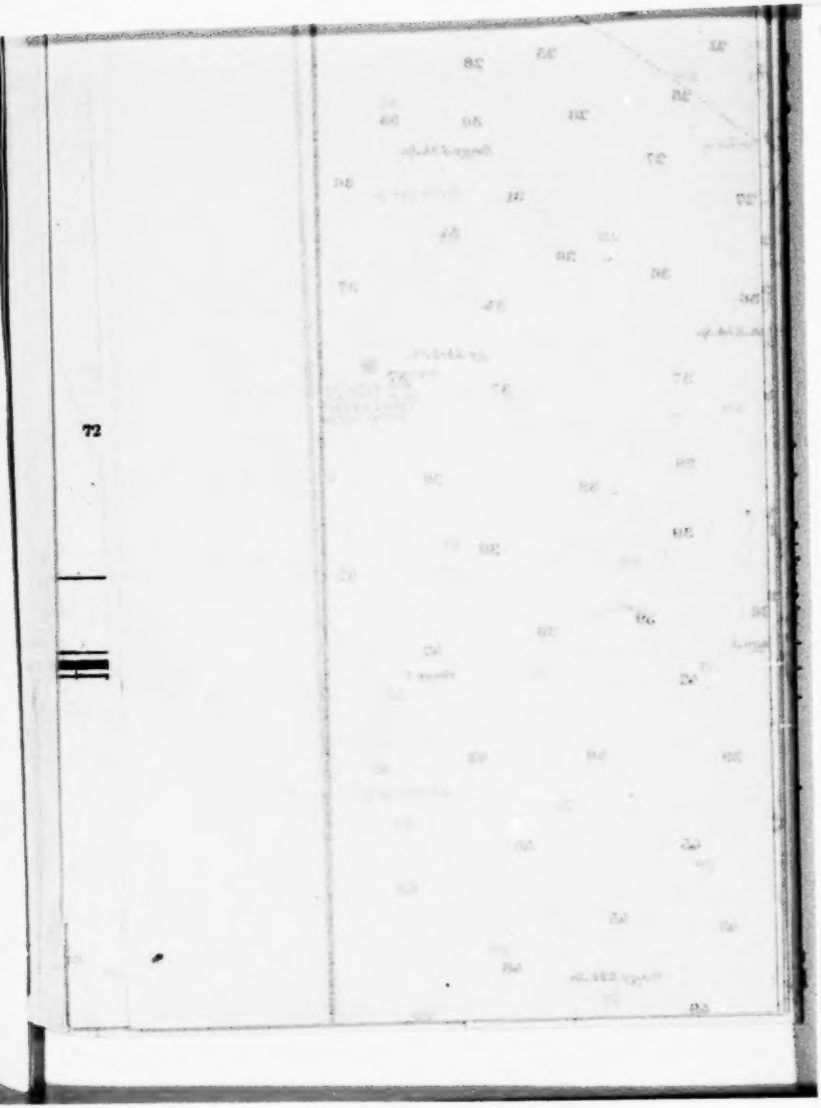
166 the schooner had changed her course and was headed to the westward".

Upon these requests the court charged, "It is "the claim of the defendant, that at the time of "the accident there was no one at the wheel of the "schooner and that there was no lookout. It is for "you to say, in the light of all the evidence, just "what the facts are; and if you find them to be as "claimed by the defendant, it is still for you to "say whether those omissions, if they were omis-"sions, contributed to the happening of the acci-"dent."

We are inclined to the view that this charge did
167 not fairly and fully cover the requests, and that the defendant was entitled to have a charge substantially in the language of the requests. While, as we have said, negligence on the part of those in charge of the schooner would not necessarily absolve those in command of the steamer from the charge of negligence, yet the questions of separate and concurring negligence were so interdependent that the rules of law pertaining to these questions, above all others, should have been clearly and precisely stated to the jury. As an abstract proposition it goes without saying that the duties of wheelman and lookout upon vessels navigating the high seas, are of the highest importance and, in case of collision,
168 their conduct is always the subject of minute scrutiny. As applied to the case at bar the effect of the alleged absence of two such important functionaries in the management of the schooner presented, of course, a question for the jury, but the defendant had the right to a proper charge upon that subject.

It would undoubtedly be going too far to say that the refusal of the court to charge as requested was clearly controlling of the verdict found, and yet it would not be going far enough to arbitrarily assume that it had no effect whatever. Therefore, we think the refusal to charge as requested was error for which the judgment herein should be reversed and a new trial granted with costs to abide the event.

MAP(S) IS/ARE TOO LARGE TO BE FILMED



Supreme Court, Appellate Division, First Department.

MINNIE GRUBE, as Administratrix of the Goods, Chattels, and Credits of John Grube, Deceased, Plaintiff-Respondent,
vs.
HAMBURG AMERICAN STEAMSHIP COMPANY, Defendant-Appellant.

O'Gorman, J.

SIRS: You will please to take notice, that the appeal from the judgment dated December 30th 1903, and from the order herein entered January 11th 1904 in the above entitled action will be brought on for argument before this honorable court, at a term thereof, to be held at the appellate division court house, in the borough of Manhattan, city of New York on the 7th day of June, 1904, at the opening of the court on that day, or as soon thereafter as counsel can be heard. And that a preference on the calendar in the argument thereof is claimed on the ground that the sole plaintiff is an administrator, pursuant to section 791 of the code of civil procedure.

Dated, New York, May 10th, 1904.

Yours, etc., LAMB, OSBORNE & PETTY,
Attorneys for Plaintiff-Respondent,
253 *Broadway, Borough of Manhattan, City of New York.*

To Messrs. Wheeler, Cortis & Haight, attorneys for defendant-appellant, 21 State street, borough of Manhattan, city of New York.

[Endorsed:] Supreme court, appellate division. Minnie Grube, as adm'r'x, etc., plaintiff, *vs.* Hamburg American Steamship Company, Copy. Respondent's notice of argument with claim of preference. Lamb, Osborne & Petty, att'ys for respondent, 253 Broadway, New York city, New York. Due service of a copy of the within notice of argument with claim of preference is hereby admitted. New York, May 10, 1904. —— ——, attorneys for appellant. Received copy May 10 1904 Wheeler, Cortis & Haight. Filed May 11 1904.

New York Supreme Court, Appellate Division, First Department.

MINNIE GRUBE, as Administratrix, &c.,
against
THE HAMBURG AMERICAN STEAMSHIP COMPANY. } Notice of Argument

Please to take notice, that the appeal in the above action will be brought on for argument before this honorable court, at a stated

term thereof, to be held at the appellate division court house, Manhattan, New York on the 7th day of June, 1904, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated the 9th day of May 1904.

Yours, &c.,

WHEELER, CORTIS & HAIGHT,
Attorneys for Defendant, 21 State Street, New York City.

To Lamb, Osborne & Petty, Esqs., attorneys for plaintiff.

[Endorsed:] New York supreme court, appellate division, first department Minnie Grube, as adm'x, &c., against The Hamburg-American Steamship Company. Notice of argument. Wheeler, Cortis & Haight, 21 State street, New York, attorneys for defendant. N. Y. May 9th 1904 Admit due service of the within notice. Lamb, Osborne & Petty, attorneys for pl'ff.

New York Supreme Court, Appellate Division, First Department.

MINNIE GRUBE, as Administratrix, &c.,
against
THE HAMBURG AMERICAN STEAMSHIP COMPANY.

COUNTY OF NEW YORK, *ss:*

John W. Griffin, being duly sworn, deposes and says, I am a clerk in the office of Wheeler, Cortis & Haight, attorneys for defendant herein. On the 21st day of April, 1904, I served three copies of the case on appeal herein upon Messrs. Lamb, Osborne & Petty, attorneys for the plaintiff herein at their office No. 253 Broadway, New York city.

JOHN W. GRIFFIN.

Sworn to before me this 9th day of May, 1904.

HARRY M. HEWETT,
Notary Public, N. Y. Co.

At a term of the appellate division of the supreme court held in and for the first judicial department in the court house thereof in the county of New York on the 24th day of June, 1904.

Present: Hon. Charles H. Van Brunt, P. J.; Hon. Edward Patterson, Hon. George L. Ingraham, Hon. Chester B. McLaughlin, Hon. Frank C. Laughlin, JJ.

MINNIE GRUBE, as Administratrix of the Goods, Chattels, and Credits of John Grube, Deceased, Plaintiff,
vs.
THE HAMBURG AMERICAN STEAMSHIP COMPANY, Otherwise Known as the Hamburg Amerikanische Packetfahrt Actien Gesellshaft, Defendant.

The defendant herein having appealed to the appellate division of the supreme court from the judgment entered herein in the office

of the clerk of the county of New York, the clerk of said supreme court on the 30th day of December, 1903, in favor of the plaintiff and against the defendant for the sum of $11,048.71/100 and also from an order made at the trial term of the said supreme court, denying defendant's motion for a new trial and entered in the office of the clerk of the county of New York, the clerk of said supreme court, on the 24th day of December, 1903, and said appeal coming duly on to be heard on June 9th, 1904, and after hearing Everett P. Wheeler, Esq., of counsel for the defendant in support of said appeal, and Gilbert D. Lamb, Esq., of counsel for plaintiff in opposition thereto, and due deliberation having been had thereon, and this court having stated :—

"Upon plaintiff's stipulating to reduce judgment as entered for damages, costs and allowances, etc., to the sum of $8,423.71/100, judgment as so modified will be affirmed without costs, otherwise judgment and order will be reversed and new trial ordered, costs to abide event." And the plaintiff having so stipulated to reduce said judgment a stipulation to that effect being annexed hereto,

Now, on motion of Lamb, Osborne & Petty, attorneys for plaintiff herein, it is

Unanimously ordered that the said judgment as so reduced to the sum of $8,423.71/100 and the said order appealed from be and they hereby are affirmed without costs of this appeal to either party.

Ent.

Appellate Division of the Supreme Court, State of New York, First Judicial Department.

Clerk's Office, New York County.

M. GRUBE, Adm'x,
vs.
HAMBURG AMERICAN STEAMSHIP CO.

I, Alfred Wagstaff, clerk of the appellate division of the supreme court in the first judicial department, do hereby certify that the foregoing is a copy of the order made by said court upon the appeal in the above-entitled action or proceeding, and entered in my office on the 8th day of July 1904, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New York, this 11th day of July 1904

[Seal Supreme Court, Appellate Division, First Department.]

ALFRED WAGSTAFF, *Clerk.*

Supreme Court, New York County.

MINNIE GRUBE, as Administratrix of the Goods, Chattels, and Credits of John Grube, Deceased, Plaintiff,
vs.
THE HAMBURG AMERICAN STEAMSHIP COMPANY, Otherwise Known as The Hamburg Amerikanische Packetfahrt Actien Gesellshaft, Defendant.

Plaintiff herein hereby stipulates and consents that the judgment heretofore entered herein in the office of the clerk of the county of New York on December 30th, 1903, in favor of the plaintiff and against the defendant for the sum of $11,048.71/100 consisting of damages, costs and allowances &c., be reduced to the sum of $8,423.71/100.

Dated, New York, June 25th 1904.

MINNIE GRUBE, *Plaintiff.*

CITY OF NEW YORK
County of New York, } *ss:*

On this 1st day of July, 1904, before me personally appeared Minnie Grube, to me known and known to me to be the plaintiff in the above entitled action and the individual described in and who executed the fore-going instrument and she duly acknowledged to me that she executed the same.

JOSEPH R. FRITH, JR.,
Notary Public 34, *County of New York.*

[Endorsed:] Supreme court New York county. H. Minnie Grube, as administratrix of the goods, chattels and credits of John Grube, deceased, plaintiff, against The Hamburg American Steamship Company, defendant. Copy. Remittitur. Lamb & Petty, attorneys for plaintiff. Office and post office address, Postal Telegraph building, 253 Broadway, borough of Manhattan, city of New York, New York. Filed Jul- 12 1904

Supreme Court, New York County.

MINNIE GRUBE, as Administratrix of the Goods, Chattels, and Credits of John Grube, Deceased, Plaintiff,
vs.
THE HAMBURG AMERICAN STEAMSHIP COMPANY, Otherwise Known as The Hamburg Amerikanische Packetfahrt Actien Gesellshaft, Defendant.

The appeal of the defendant dated, January 26, 1904, from the judgment in this action entered in the office of the clerk of the county of New York on the 30th day of December, 1903, in favor

of plaintiff and against the defendant for the sum of $11,048.71 / 100 and also from an order entered in the office of the clerk of the county of New York on the 11th day of January 1904, denying defendant's motion for a new trial, coming on to be heard at the appellate division, first department, and said appeal having been duly argued, and an order having been entered at said appellate division reducing the said judgment as entered to the sum of $8,423.71 / 100 and affirming said judgment as so reduced without costs of said appeal, it is on motion of Lamb, Osborne & Petty, attorneys for plaintiff,

Adjudged that the said judgment as entered and as so reduced to the sum of $8,423.71 / 100 be and the same hereby is affirmed without costs of said appeal to either party.

Dated July 13, 1904.

[Seal of New York.]

THOS. L. HAMILTON, *Clerk.*
M. J. D.

[Endorsed:] 35. Supreme court New York county. Minnie Grube, as administratrix of the goods, chattels and credits of John Grube, deceased, plaintiff, against The Hamburg American Steamship Company, defendant. Judgment. Lamb, Osborne & Petty attorneys for plaintiff. Office and post office address, Postal Telegraph building, 253 Broadway, borough of Manhattan, city of New York, New York. E. J. H., 50c. Filed July 13, 1904, 10 h. 37 m.

SIR: Please take notice that the within is a copy of a judgment this day duly entered in the within mentioned action in the office of the clerk of the within named court.

Dated New York, July 1, 1904.

Yours, &c., LAMB, OSBORNE & PETTY,
Attorneys for Plaintiff.

253 Broadway, borough of Manhattan, city of New York.

To —— ——, attorney for —.

Supreme Court of the United States.

THE HAMBURG AMERICAN STEAMSHIP COMPANY, Plaintiff in Error,
against
MINNIE GRUBE, as Administratrix of John Grube, Defendant in Error.

To the Supreme Court of the United States:

The petition of The Hamburg American Steamship Company, a corporation incorporated under the laws of the Empire of Germany and the free city of Hamburg, and having a principal place of busi

ness in the city, county and State of New York, defendant in the above entitled action, respectfully shows to this court:

That a judgment affirming the judgment of the supreme court of the State of New York in this action, was rendered herein by the appellate division of the supreme court of the State of New York on the 13th day of July, 1904.

Pursuant to the provisions of the Code of Civil Procedure of the State of New York, a motion was afterwards made to the said appellate division, to certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals of said State. Said motion was, on the 14th day of October, 1904, denied by the said appellate division. Subsequently thereto, pursuant also to the provisions of said Code of Civil Procedure, an application was made to the Honorable Edgar M. Cullen, chief judge of the court of appeals, to allow an appeal from the said appellate division of said supreme court, to the court of appeals. The said chief judge refused to allow an appeal on the ground that the questions involved in the record were Federal questions, and should be reviewed by the Supreme Court of the United States.

The said appellate division of the supreme court of the State of New York is the highest court of said State in which a decision in this action could be had. In the said action rights, privileges and immunities were claimed by your petitioner under the Constitution and statutes of the United States, and under authority exercised under the United States, and the decision of the said appellate division was against the rights, privileges and immunities especially set up and claimed under said Constitution, statutes and authority. Your petitioner, therefore, desires to avail itself of the law and practice in such case made and provided by a writ of error from the Supreme Court of the United States. Your petitioner therefore prays that the said writ may be allowed by this court. And your petitioner will ever pray.

Dated, New York, October 19th, 1904.

THE HAMBURG AMERICAN
STEAMSHIP COMPANY.
EMIL L. BOAS, *General Manager.*

EVERETT P. WHEELER, *Of Counsel.*

COUNTY OF NEW YORK, *ss:*

Emil L. Boas being duly sworn, deposes and says: That he is the agent in the port of New York of The Hamburg American Steamship Company, the petitioner above named. That he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except the allegations as to the proceedings in the court of appeals, as to which an affidavit is submitted.

Deponent further says that the petitioner is a corporation and that therefore this affidavit is made by him as its agent.

EMIL L. BOAS.

Sworn to before me this 19th day of October, 1904.

[Seal of Harry Mason Hewitt, Notary Public, New York.]

HARRY M. HEWITT,
Notary Public, New York County.

Supreme Court of the United States.

THE HAMBURG AMERICAN STEAMSHIP COMPANY, Plaintiff in Error,
against
MINNIE GURBE, as Administratrix, &c., Defendant in Error.

STATE OF NEW YORK, *Southern District of New York*, } ss:

Clarence B. Smith, being duly sworn, deposes and says: I am of counsel for The Hamburg American Steamship Company in the suit brought against it in the supreme court in the State of New York by Minnie Grube, as administratrix of John Grube, deceased. On behalf of said company on the 18th day of October instant I applied to the Honorables Edgar M. Cullen, chief judge of the court of appeals of the State of New York for leave to appeal to that court from the judgment of the appellate division of the supreme court of the State of New York in and for the first department, rendered in favor of the said Minnie Grube as administratrix and against the said company, in July, 1904. The said chief judge denied the said application and made thereon memorandum of which the following is a copy.

"Application for leave to appeal to the court of appeals denied on the ground that the question ought to be reviewed as a Federal question, the ultimate decision of which must be made by the U. S. Supreme Court and that a review of the question by that court can be had by a writ of error to the appellate division, thus avoiding the expense and delay attendant on appeal to the court of appeals."

(Signed) EDGAR M. CULLEN,
Ch. Judge Ct. of Ap'l.

Oct. 18/04.

CLARENCE BISHOP SMITH.

Sworn to before me this 19th day of October, 1904.

[Seal of Harry Mason Hewitt, Notary Public, New York.]

HARRY M. HEWITT,
Notary Public, N. Y. Co.

Due service of a copy of the within petition & affd. is hereby admitted, New York, Oct. 21st 1904, — att'ys for def't in error.

LAMB, OSBORNE & PETTY,
For Minnie Grube, as Adm'x.

[Endorsed:] United States Supreme Court. The Hamburg American Steamship Company, plaintiff in error against Minnie Grube as adm'r'x of John Grube, defendant in error. Petition & affidavit. Everett P. Wheeler, att'y for pl'ff in error 21 State street, New York city, N. Y. Received Oct. 27 1904. Thos. L. Hamilton, c'k.

UNITED STATES OF AMERICA, *ss:*

To Minnie Grube, as administratrix, &c., of John Grube, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 21st day of November, 1904, pursuant to a writ of error filed in the clerk's office of the appellate division of the supreme court of the State of New York in and for the first department, wherein The Hamburg American Steamship Company is plaintiff and you are defendant in — to show cause if any there be, why judgment in said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, justice of the said Supreme Court of the United States this 20th day of October, in the year of our Lord one thousand nine hundred and four.

R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

Due service of a copy of the within citation is hereby admitted, New York, Oct. 21st, 1904, — att'ys for def't in error.

LAMB, OSBORNE & PETTY,
For Minnie Grube, as Adm'x.

[Endorsed:] Supreme Court of the United States. The Hamburg American Steamship Company, plaintiff in error against Minnie Grube as adm'r'x of John Grube, defendant in error Citation Everett P. Wheeler, att'y for pl'ff in error 21 State street, New York city, N. Y. Received Oct. 27 1904. Thos. L. Hamilton.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the justices of the appellate division of the supreme court of the State of New York in and for the first department, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the appellate division of the supreme court of the State of New York in and for the first department, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Minnie Grube as administratrix of John Grube, deceased, plaintiff, and The Hamburg American Steamship Company, defendant, wherein rights, privileges and immunities are claimed under the Constitution and statutes of the United States and under authority exercised under the United States, and the decision was against the rights, privileges and immunities specially set up or claimed under such Constitution, statutes and authority, a manifest error has happened to the great damage of the said Hamburg American Steamship Company, as by its complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you may have the same at Washington on the 21st of November next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States the 20 day of Oct. in the year of our Lord one thousand nine hundred and four.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed Oct. 20, 1904.

R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

323.

STATE OF NEW YORK, }
County of New York, } ss:

I, Thos. L. Hamilton, clerk of the said county, and clerk of the supreme court of said State for said county, do certify, that the annexed is the original record, citation and writ of error received and attached thereto, Minnie Grube as adms. &c., *vs.* Hamburg-American Steamship Company on file in my office, and that the same is a correct transcript therefrom, and the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 28th day of Oct. 1904.

[Seal of New York.]

THOS. L. HAMILTON, *Clerk.*

Due service of a copy of the within writ of error is hereby admitted, New York, Oct. 21 1904, — att'ys for def't in error.

LAMB, OSBORNE & PETTY,
For Minnie Grube, as Adm'x.

[Endorsed:] Supreme Court of the United States. The Hamburg American Steamship Co. plaintiff in error, against Minnie Grube as adm'r'x of John Grube, defendant in error Writ of error. Everett P. Wheeler, att'y for pl'ff in error, 21 State street, New York city, N. Y. Received Oct. 27 1904 Thos. L. Hamilton cl.

New York Supreme Court, Appellate Division, First Department.

MINNIE GRUBE, Administratrix of the Estate of John Grube, Deceased, Plaintiff in Error,
against
THE HAMBURG AMERICAN STEAMSHIP COMPANY, Defendant in Error.

Know all men by these presents: that we, the Hamburg American Steamship Company, a corporation incorporated under the laws of the Empire of Germany and the free city of Hamburg, and having a principal place of business in the city, county and State of New York, as principal, and the United States Fidelity and Guaranty Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and having an office and regular place of business in the city, county and State of New York, as surety, are held and firmly bound unto Minnie Grube, as administratrix of the estate of John Grube, deceased, in the sum of eleven thousand dollars ($11,000), lawful money of the United States of America, to the payment of which well and truly to be made, the

said principal, and the said surety, bind themselves, their and each of their successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of October, in the year one thousand nine hundred and four.

Whereas, in the above entitled action the New York supreme court, appellate division, first department, rendered its judgment on the 13th day of July, 1904, affirming the judgment of the New York supreme court, New York county, and the said The Hamburg American Steamship Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said New York supreme court, appellate division, first department, to reverse the judgment in the aforesaid suit, and a citation directed to the said Minnie Grube, administratrix of the estate of John Grube, deceased, citing and admonishing her to be and appear at the Supreme Court of the United States at Washington within thirty days from the date thereof;

Now, the condition of this obligation is such, that if the said The Hamburg American Steamship Company shall prosecute its said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

THE HAMBURG AMERICAN STEAMSHIP COMPANY.
EMIL L. BOAS, *General Manager.*
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By SYLVESTER J. O'SULLIVAN, *Manager.*

Attest:
[SEAL.] GEORGE E. HAYES, *Attorney-in-Fact.*

Sealed and delivered in the presence of—
H. M. HEWITT.

COUNTY OF NEW YORK, *ss:*

On this 19th day of October, 1904, before me personally appeared Emil L. Boas, general manager of the Hamburg American Steamship Company, to me personally known and known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged that he executed the same as general manager of the Hamburg American Steamship Company.

HARRY M. HEWITT,
[SEAL.] *Notary Public, N. Y. Co.*

Form 110–1, M-7, '04.

Affidavit, Acknowledgement, and Justification by the United States Fidelity and Guaranty Company.

We will bond you.

Fidelity, judicial, burglary, contract.

STATE OF NEW YORK, *County of New York,* } ss:

Before me personally came Sylvester J. O'Sullivan, known to me to be the manager of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Hamburg American Steamship Company as surety thereon, who being by me duly sworn, deposes and says that he resides in the city of New York, State of New York, and that he is the manager of said The United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of Maryland; that said company has complied with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Hamburg American Steamship Company is the corporate seal of said The United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like order and authority as manager of said company; and that he is acquainted with George E. Hayes, and knows him to be attorney in fact of said company; and that the signature of said George E. Hayes, subscribed to said bond is the genuine handwriting of said George E. Hayes, and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent; and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of one million dollars ($1,000,000.00).

SYLVESTER J. O'SULLIVAN.

Sworn to, acknowledged before me, and subscribed in my presence this 19th day of October, 1904.

[SEAL.]

VINCENT J. BOYLE,
Notary Public, New York County.
M. J. D.

Form 9.

No. 296.

STATE OF NEW YORK, } ss.:
County of New York, }

I, Thomas L. Hamilton, clerk of the said county and clerk of the supreme court of said State for said county, do certify, that I have compared the preceding with the original bond, with approval endorsed thereon, on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed filed Oct. 27th, 1904.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 5th day of Nov'r, 1904.

[Seal State of New York.]

THOS. L. HAMILTON, *Clerk.*

[Endorsed:] G. New York supreme court, appellate division, first department. Minnie Grube, as adm'x &c. plaintiff in error, against The Hamburg American Steamship Company, defendant in error. Bond on writ of error. Approved Oct. 20, 1904. R. W. Peckham asso. jus. Sup. Ct. U. S.

[Endorsed:] File No. 19,511 Supreme Court U. S. October term, 1904 Term No. 411 The Hamburg American Steamship Co. P. E. *vs.* Minnie Grube as adm'x &c. Writ of error bond. Filed Nov. 7, 1894.

Supreme Court of the United States, October Term, 1904.

THE HAMBURG AMERICAN STEAMSHIP COMPANY, Plaintiff in Error, *against* MINNIE GRUBE, as Administratrix, &c., Defendant in Error. } Assignment of Error.

Afterwards, to-wit, in this same term, before the justices of the Supreme Court at the Capitol in the city of Washington, comes the said, The Hamburg American Steamship Company, by Everett P. Wheeler, its attorney, and says that in the record and proceedings aforesaid there is manifest error in every one of the following rulings and decisions, to-wit:

First. The supreme court of the State of New York erred in deciding that under the statute of the United States approved June 28th, 1834, confirming and approving the agreement as to bounda-

ries between the State of New York and the State of New Jersey, which agreement is referred to in said act of Congress, the jurisdiction of the State of New Jersey extends to a line parallel with the coast thereof and distant one marine league from such coast line; whereas under the said statute of the United States and the agreement as to boundaries therein mentioned between the State of New York and the State of New Jersey, the boundary of the State of New Jersey and the jurisdiction of said State extends only to the main sea,—that is to say, low water mark along its exterior coast line and the line drawn from headland to headland across the entrance of the bay of New York.

Second. The said supreme court of the State of New York erred in denying the claim made upon the trial of this cause as aforesaid, to-wit, that under the said statute of the United States it was free in navigating the main sea to the eastward of the exterior coast line of the State of New Jersey from the jurisdiction of said State and from the operation of any law of said State of New Jersey giving right of action for injuries causing death.

Third. The said supreme court of the State of New York also erred in deciding that the United States of America had not acquired exclusive jurisdiction and legislation in all cases whatsoever over the peninsula of Sandy Hook and the littoral waters of the main sea to the eastward of that peninsula by virtue of section 8, article 1 of the Constitution of the United States and of the purchase by the United States of America of the said Sandy Hook peninsula and the appurtenances thereto and the waters necessary to the use thereof, pursuant to the authority conferred by the act of Congress of the United States, passed March 26, 1804, and of other acts of Congress authorizing said purchase, and of the cession by the State of New Jersey to the United States of America contained in the statute of said last mentioned State passed March 12, 1846.

Fourth. The said supreme court of the State of New York erred in denying the right claimed by the plaintiff in error by reason of the said purchase by the United States of the Sandy Hook peninsula and the appurtenances thereto and the waters necessary to the use thereof, and the cession to the United States by the State of New Jersey of jurisdiction over the same, and the long continued use by the United States of that peninsula and of the main sea to the eastward of it for military purposes, and by virtue of the said section of the Constitution of the United States and the said acts of Congress before mentioned, to be free in navigating the main sea to the eastward of the peninsula from the operation of any law of the State of New Jersey giving right of action for injuries causing death.

Fifth. The said supreme court of the State of New York erred in denying the claim of the defendant that the main sea to the eastward of the said Sandy Hook peninsula within a distance of three miles from the main shore is subject only to the jurisdiction of the United States, and therefore, as it appeared by uncontradicted evidence that the collision between the steamship "Alene" and the

pilot schooner James Gordon Bennett to recover damages for which this suit is brought, occurred on the main sea to the eastward of this peninsula a distance of more than one mile from low water mark upon the easterly side thereof, the plaintiff in error was entitled to have the court direct a verdict in its favor and its exception to the denial by the court of the motion to direct such verdict was well taken.

Sixth. The supreme court of the State of New York erred in denying the motion stated in said record to direct a verdict for the plaintiff in error upon the grounds therein stated, and the exception taken to such denial was well taken.

Seventh. That by the record aforesaid it appears that the judg ment aforesaid given was given for the said Minnie Grube, as administratrix, &c., against the said Hamburg American Steamship Company. Whereas, by the law of the land the said judgment ought to have been given for the said Hamburg American Steamship Company against the said Minnie Grube, as administratrix, &c., and the said Hamburg American Steamship Company prays the judgment aforesaid may be reversed, annulled and held for nothing, and that it may be restored to all things which it has lost by occasion of the said judgment.

EVERETT P. WHEELER,
Of Counsel for Plaintiff in Error.

[Endorsed:] U. S. Supreme Court, October term, 1904 The Hamburg American Steamship Company, pl'ff in error, against Minnie Grube, as administratrix &c. def't in error Assignment of errors Wheeler, Cortis & Haight, att'ys for pl'ff in error 21 State street, New York city, N. Y.

[Endorsed:] File No. 19511. Supreme Court U. S. October term, 1904 Term No. 411 The Hamburg American S. S. Co. P. E. *vs.* Minnie Grube adm'x Assignment of errors Filed Nov. 22, 1904.

Endorsed on cover: File No. 19,511. New York supreme court. Term No. 411. The Hamburg American Steamship Company, plaintiff in error, *vs.* Minnie Grube, as administratrix of John Grube, deceased. Filed November 1st, 1904. File No. 19,511.